RECEIVED
JUN 4 1996
FEDERAL ...

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 203 of	)	
The Telecommunications Act of 1996	)	MM Docket No. 96-90
(Broadcast License Terms)	)	
	)	
47 CFR Sections 73.1020 and 74.15	)	

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF MEDIA ACCESS PROJECT AND CENTER FOR MEDIA EDUCATION

Media Access Project ("MAP") and Center for Media Education ("CME") respectfully submit these reply comments in the above-referenced matter.

Even though the plain language of Section 203 of the Telecommunications Act of 1996, P.L. 104-104 ("Act"), unequivocally allows the Commission discretion to extend broadcast license terms to eight years only if it finds that the public interest would be served thereby, the National Association of Broadcasters ("NAB") and National Broadcasting Company ("NBC") outrageously argue that the Commission has no discretion at all. They rationalize that, despite express language to the contrary, Congress intended that the Commission would automatically grant eight year terms. This self-serving argument ignores basic axioms of statutory construction. Moreover, MAP and CME's proposal does not preclude granting eight year terms, but argues that the Commission should do so only if it also imposes specific, quantitative public interest requirements on broadcasters in return.

I. THE PLAIN LANGUAGE OF SECTION 203 IS UNAMBIGUOUS IN GIVING THE COMMISSION DISCRETION TO GRANT SHORTER LICENSE TERMS.

Both broadcast industry commenters characterize the Commission's proposal to license broadcasters for the statutory maximum term of eight years as "reflect[ing] Congressional intent,"

No. of Copies rec'd 0+11
List ABCDE

and therefore requiring no further deliberation. NAB Comments at 2; NBC Comments at 2. Although NBC acknowledges that "the statutory language granted the Commission discretion," both NBC and the NAB rely on conference report language stating that Congress was extending the term "to eight years for both television and radio," *id,* to support their conclusion that the Commission has no such discretion.

But this analysis of the legislative history is dispensable in the face of unambiguous statutory language. *See* Sutherland Stat. Const. §48.01 (4th ed. 1984 & Supp. 1990). "'Unless exceptional circumstances dictate otherwise,...inquiry into the meaning of a statute is complete [if]...the terms of the statue are unambiguous.'" *Id.*, citing *Burlington Northern R. Co. v. Oklahoma Tax Commission*, 481 U.S. 454 (1987). The plain language of the statute gives the Commission ample discretion to grant shorter license terms. Indeed, the Commission may exercise its discretion only if it finds that "the public interest, convenience, and necessity [are] served thereby," and that the public's interest cannot be served in the absence of quantified programming requirements. Act, §203; MAP Comments at 2.

In any event, the legislative history cited by the NAB and NBC does not in any way prohibit the result MAP and CME seek. MAP and CME do not oppose increasing license terms to 8 years *per se*, but advocate only that an increase in license term length should occur ***together with specific, quantitative public interest requirements***. Nothing in the legislative history would prevent the Commission from interpreting the statutory language this way, particularly in light of the statute's command that the Commission act in the public interest.[1]

---

[1]The NAB incorrectly notes that the 8 year license terms proposal is "consistent with the Commission's unbroken practice" to grant renewals for the full term allowed by the Communications Act. NAB Comments at 1-2. This is erroneous because the Commission has always

II. LONGER LICENSE TERMS WITHOUT MORE MAY BENEFIT *BROADCASTERS*, BUT THEY WILL NOT BENEFIT THE PUBLIC.

Of the two broadcast commenters, only NBC even ventures to advance a rationale that longer license terms will benefit the public. It comments that 8 year terms will provide broadcast stations with "greater stability" in that they will be less frequently subjected to "the specter of a license renewal challenge...." NBC Comments at 2.[2] This, it says, will encourage long-term planning and capital investments, may promote innovations in programming and service, and will save the licensee the time and resources of seeking renewal. *Id.*

But these claims are transparently self serving. The public benefits NBC asserts will actually just benefit broadcasters with a "decreased administrative workload"[3] and lower legal fees.

NBC's claim of greater stability implies that broadcasters have faced instability in the past.

---

construed Section 307 as giving it discretion to grant shorter license terms, and it indeed has done so on several prior occasions, such as provisional licenses, probational licenses, and experimental stations. Moreover, as MAP and CME noted in their comments, the Commission's prior actions are not controlling given the new statutory mandate of the Act.

[2]NBC does not explain away the fact that, in the case of radio stations, the license term would increase by only one year, providing little in the way of additional "stability."

[3]NBC's claim that longer license terms will result in savings in the "administrative workload" of licensees and "administrative demands on the agency staff" is discredited by the fact that licensees, until very recently, were required to file only a mere postcard to apply for renewal. NBC Comments at 2-3. *Revision of Applications for Renewal*, 49 RR2d 740 (1981), *modified in part and pet. for recon. denied*, 87 FCC2d 1127, *aff'd sub nom., Black Citizens for a Fair Media v. FCC*, 719 F.2d 407 (1983), *cert. denied*, 467 U.S. 1255 (1984) ("*Postcard Renewal*"). While licensees now have to demonstrate their compliance with the Children's Television Act of 1990, 47 USC §303a, P.L. No. 101-437, the increase in workload is minimal. Simplified renewal applications were adopted to cut the workload to the bone, therefore any additional savings in administrative workload from longer license terms would be negligible. *Postcard Renewal*, 49 RR2d at 742-43.

This is simply untrue, because, in practice, broadcast licensees have been virtually immune to license challenges over the past fifteen years. Nearly 99% of license renewals go unchallenged, and in almost every case, they have been decided in favor of the incumbent.

Moreover, the new Act imposes a two-step renewal process which enhances the stability of licenses even further. Two-step renewal prevents third parties from even filing a competing application unless and until the Commission determines to hold a hearing, which it may do only after finding that a broadcaster has failed to serve the public interest and that no mitigating factors warrant lesser sanctions. Act, §204 (adding §309(k)); Order, *Broadcast License Renewal Procedures*, FCC No. 96-172 (released April 12, 1996). In effect, the only party that can pose a threat to the station's stability is the licensee itself.[4]

NBC asserts further that this so-called "stability" from eight year terms will lead to additional capital investments in the industry, which it implies will lead in turn to improved service and to higher quality programming. NBC Comments at 2. But NBC's claimed public benefits are entirely hypothetical. It has not demonstrated how longer terms would lead - or have led in the past - to additional capital investment. Nor has it explained specifically how shorter license terms would impede long term planning. It has never shown or promised that any of this hypothetical additional investment would ever actually go towards improved programming and services, nor that it would otherwise be used to fulfill licensees' local programming and other

[4]NBC also argues that eight year licenses will give broadcasters a "longer period in which to develop a record of performance" with novel formats, thereby leading to innovations in programming and service. NBC Comments at 2. This is an empty promise, since networks and broadcasters do not experiment with shows and formats for ***five or seven years*** - let alone eight - because they are subject to the short term demands of profits, ratings, and the demands of shareholders or parent corporations.

public trustee obligations.

NBC's rationale - that a financial boon given to broadcast stations and networks will eventually "trickle down" to benefit the public indirectly - is commonly offered to justify further deregulation, but has never been valid. Many times in the past, broadcasters promised to pump the money they would save from deregulation into public service and innovative programming. *See, e.g.*, First Report and Order, *Radio Duopoly Rule*, 4 FCCRcd 1723, 1727 (1989); Second Report and Order, *Broadcast Multiple Ownership Rules*, 4 FCCRcd 1741, 1748 (1989).

Having received their desired reforms, however, broadcasters have provided ***less*** public service, not more,[5] especially locally-produced public affairs programming. A study of television programming since deregulation found that the amount of time devoted to locally produced, prime time public affairs shows declined from 19 minutes daily in 1979 to 5 minutes a decade later. Office of Communication of the United Church of Christ, *The Public Cost of TV Deregulation*, at 1 (1991) *reprinted in Public Interest in Broadcasting, Hearings before the House Subcommittee on Telecommunications and Finance*, 102d Cong., 1st Sess., 353 (May 13 and 15, 1991) ("*UCC Study*"). This study also found that, at the same time, scheduling of nationally-syndicated public affairs programs, which are cheaper to obtain but do not deal with issues of local concern, greatly increased. *Id.*

Television stations have also scheduled less "hard" news programming since deregulation, opting instead for "entertainment" or "tabloid" news shows. *More Stations Are Signing Off on*

---

[5]Undeniably, there are a few examples of stations that have increased public service since deregulation, but broadcasters as a group frequently attempt to hide behind these few best examples, concealing the dismal performance of the vast majority of stations. The Commission should not be fooled by this often-employed trick.

11 p.m. News, Wall Street Journal, May 22, 1991 at B1 (late-night newscasts being canceled to make room for "Night Court" and "Arsenio Hall Show"). The *UCC Study* found that local news during prime time declined almost 3 percent from 1984 to 1989. *UCC Study* at 1.

Radio licensees have performed far worse, often using the money gained from deregulation to reinvest in the acquisition of more stations, not in programming. *See, e.g.*, Broadcasting & Cable, June 3, 1996, at 45 (over $980 Million in radio station deals in the first five months of 1996). Over ninety percent of stations have not increased spending on public affairs and news coverage by even one penny since deregulation. In many markets, news coverage is delegated to one or two larger stations, which syndicate their news feed to smaller market competitors. *See, e.g., Radio Stations Reduce Coverage of Local News*, New York Times, May 9, 1994 at D8 (17% increase in stations without any local news staffs). Similarly, local public affairs and talk shows are increasingly being replaced by nationally syndicated shows. *See, e.g., Nice Guy. Great Show. Uh-oh*, Washington Post, May 14, 1996 at E1 (minority radio programming increasingly provided via national syndication).

CONCLUSION

To satisfy Section 203's requirement that extension of license terms serves the public interest, the Commission must find a direct - not oblique and nugatory - benefit to the public. Benefit ***to the broadcasters***, in terms of capital investments and convenience, does not comport with this standard, nor with the Supreme Court's admonition that "paramount" importance be given to the needs of viewers and listeners. *Red Lion Broadcasting v. FCC*, 395 U.S. 367, 390 (1969).

Respectfully submitted,

Joseph S. Paykel

Gigi B. Sohn /JSP

Gigi B. Sohn

Andrew Jay Schwartzman

MEDIA ACCESS PROJECT
2000 M Street, NW
Washington, DC 20036
(202)-232-4300

Law Student Intern:

Katherine J. Barton
Georgetown University Law Center

June 4, 1996